

§216.3

22 CFR Ch. II (4-1-11 Edition)

effect on the environment. In such cases, the activity may be subjected to the procedures set forth in §216.3.

(e) *Pesticides*. The exemptions of paragraph (b)(1) of this section and the categorical exclusions of paragraph (c)(2) of this section are not applicable to assistance for the procurement or use of pesticides.

[45 FR 70244, Oct. 23, 1980]

§216.3 Procedures.

(a) *General procedures*—(1) *Preparation of the Initial Environmental Examination*. Except as otherwise provided, an Initial Environmental Examination is not required for activities identified in §216.2(b)(1), (c) (2), and (d). For all other A.I.D. activities described in §216.2(a) an Initial Environmental Examination will be prepared by the originator of an action. Except as indicated in this section, it should be prepared with the PID or PAIP. For projects including the procurement or use of pesticides, the procedures set forth in paragraph (b) of this section will be followed, in addition to the procedures in this paragraph. Activities which cannot be identified in sufficient detail to permit the completion of an Initial Environmental Examination with the PID or PAIP, shall be described by including with the PID or PAIP: (i) An explanation indicating why the Initial Environmental Examination cannot be completed; (ii) an estimate of the amount of time required to complete the Initial Environmental Examination; and (iii) a recommendation that a Threshold Decision be deferred until the Initial Environmental Examination is completed. The responsible Assistant Administrator will act on the request for deferral concurrently with action on the PID or PAIP and will designate a time for completion of the Initial Environmental Examination. In all instances, except as provided in paragraph (a)(7) of this section, this completion date will be in sufficient time to allow for the completion of an Environmental Assessment or Environmental Impact Statement, if required, before a final decision is made to provide A.I.D. funding for the action.

(2) *Threshold decision*. (i) The Initial Environmental Examination will in-

clude a Threshold Decision made by the officer in the originating office who signs the PID or PAIP. If the Initial Environmental Examination is completed prior to or at the same time as the PID or PAIP, the Threshold Decision will be reviewed by the Bureau Environmental Officer concurrently with approval of the PID or PAIP. The Bureau Environmental Officer will either concur in the Threshold Decision or request reconsideration by the officer who made the Threshold Decision, stating the reasons for the request. Differences of opinion between these officers shall be submitted for resolution to the Assistant Administrator at the same time that the PID is submitted for approval.

(ii) An Initial Environmental Examination, completed subsequent to approval of the PID or PAIP, will be forwarded immediately together with the Threshold Determination to the Bureau Environmental Officer for action as described in this section.

(iii) A Positive Threshold Decision shall result from a finding that the proposed action will have a significant effect on the environment. An Environmental Impact Statement shall be prepared if required pursuant to §216.7. If an impact statement is not required, an Environmental Assessment will be prepared in accordance with §216.6. The cognizant Bureau or Office will record a Negative Determination if the proposed action will not have a significant effect on the environment.

(3) *Negative Declaration*. The Assistant Administrator, or the Administrator in actions for which the approval of the Administrator is required for the authorization of financing, may make a Negative Declaration, in writing, that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement regarding an action found to have a significant effect on the environment when (i) a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past, if relevant to the proposed action, (ii) the Agency has previously prepared a programmatic Statement or Assessment covering the activity in question which has been considered in

Agency for International Development

§216.3

the development of such activity, or (iii) the Agency has developed design criteria for such an action which, if applied in the design of the action, will avoid a significant effect on the environment.

(4) *Scope of Environmental Assessment or Impact Statement*—(i) *Procedure and Content*. After a Positive Threshold Decision has been made, or a determination is made under the pesticide procedures set forth in paragraph (b) of this section that an Environmental Assessment or Environmental Impact Statement is required, the originator of the action shall commence the process of identifying the significant issues relating to the proposed action and of determining the scope of the issues to be addressed in the Environmental Assessment or Environmental Impact Statement. The originator of an action within the classes of actions described in §216.2(d) shall commence this scoping process as soon as practicable. Persons having expertise relevant to the environmental aspects of the proposed action shall also participate in this scoping process. (Participants may include but are not limited to representatives of host governments, public and private institutions, the A.I.D. Mission staff and contractors.) This process shall result in a written statement which shall include the following matters:

(a) A determination of the scope and significance of issues to be analyzed in the Environmental Assessment or Impact Statement, including direct and indirect effects of the project on the environment.

(b) Identification and elimination from detailed study of the issues that are not significant or have been covered by earlier environmental review, or approved design considerations, narrowing the discussion of these issues to a brief presentation of why they will not have a significant effect on the environment.

(c) A description of (1) the timing of the preparation of environmental analyses, including phasing if appropriate, (2) variations required in the format of the Environmental Assessment, and (3) the tentative planning and decision-making schedule; and

(d) A description of how the analysis will be conducted and the disciplines that will participate in the analysis.

(ii) These written statements shall be reviewed and approved by the Bureau Environmental Officer.

(iii) *Circulation of scoping statement*. To assist in the preparation of an Environmental Assessment, the Bureau Environmental Office may circulate copies of the written statement, together with a request for written comments, within thirty days, to selected federal agencies if that Officer believes comments by such federal agencies will be useful in the preparation of an Environmental Assessment. Comments received from reviewing federal agencies will be considered in the preparation of the Environmental Assessment and in the formulation of the design and implementation of the project, and will, together with the scoping statement, will be included in the project file.

(iv) *Change in Threshold Decision*. If it becomes evident that the action will not have a significant effect on the environment (*i.e.*, will not cause significant harm to the environment), the Positive Threshold Decision may be withdrawn with the concurrence of the Bureau Environmental Officer. In the case of an action included in §216.2(d)(2), the request for withdrawal shall be made to the Bureau Environmental Officer.

(5) *Preparation of Environmental Assessments and Environmental Impact Statement*. If the PID or PAIP is approved, and the Threshold Decision is positive, or the action is included in §216.2(d), the originator of the action will be responsible for the preparation of an Environmental Assessment or Environmental Impact Statement as required. Draft Environmental Impact Statements will be circulated for review and comment as part of the review of Project Papers and as outlined further in §216.7 of those procedures. Except as provided in paragraph (a)(7) of this section, final approval of the PP or PAAD and the method of implementation will include consideration of the Environmental Assessment of final Environmental Impact Statement.

(6) *Processing and review within A.I.D.*
(i) Initial Environmental Examinations, Environmental Assessments and

final Environmental Impact Statements will be processed pursuant to standard A.I.D. procedures for project approval documents. Except as provided in paragraph (a)(7) of this section, Environmental Assessments and final Environmental Impact Statements will be reviewed as an integral part of the Project Paper or equivalent document. In addition to these procedures, Environmental Assessments will be reviewed and cleared by the Bureau Environmental Officer. They may also be reviewed by the Agency's Environmental Coordinator who will monitor the Environmental Assessment process.

(ii) When project approval authority is delegated to field posts, Environmental Assessments shall be reviewed and cleared by the Bureau Environmental Officer prior to the approval of such actions.

(iii) Draft and final Environmental Impact Statements will be reviewed and cleared by the Environmental Coordinator and the Office of the General Counsel.

(7) *Environmental review after authorization of financing.* (i) Environmental review may be performed after authorization of a project, program or activity only with respect to subprojects or significant aspects of the project, program or activity that are unidentified at the time of authorization. Environmental review shall be completed prior to authorization for all subprojects and aspects of a project, program or activity that are identified.

(ii) Environmental review should occur at the earliest time in design or implementation at which a meaningful review can be undertaken, but in no event later than when previously unidentified subprojects or aspects of projects, programs or activities are identified and planned. To the extent possible, adequate information to undertake deferred environmental review should be obtained before funds are obligated for unidentified subprojects or aspects of projects, programs or activities. (Funds may be obligated for the other aspects for which environmental review has been completed.) To avoid an irreversible commitment of resources prior to the conclusion of environmental review, the obligation of

funds can be made incrementally as subprojects or aspects of projects, programs or activities are identified; or if necessary while planning continues, including environmental review, the agreement or other document obligating funds may contain appropriate covenants or conditions precedent to disbursement for unidentified subprojects or aspects of projects, programs or activities.

(iii) When environmental review must be deferred beyond the time some of the funds are to be disbursed (e.g. long lead times for the delivery of goods or services), the project agreement or other document obligating funds shall contain a covenant or covenants requiring environmental review, including an Environmental Assessment or Environmental Impact Statement, when appropriate, to be completed and taken into account prior to implementation of those subprojects or aspects of the project, program or activity for which environmental review is deferred. Such covenants shall ensure that implementation plans will be modified in accordance with environmental review if the parties decide that modifications are necessary.

(iv) When environmental review will not be completed for an entire project, program or activity prior to authorization, the Initial Environmental Examination and Threshold Decision required under paragraphs (a)(1) and (2) of this section shall identify those aspects of the project, program or activity for which environmental review will be completed prior to the time financing is authorized. It shall also include those subprojects or aspects for which environmental review will be deferred, stating the reasons for deferral and the time when environmental review will be completed. Further, it shall state how an irreversible commitment of funds will be avoided until environmental review is completed. The A.I.D. officer responsible for making environmental decisions for such projects, programs or activities shall also be identified (the same officer who has decision making authority for the other aspects of implementation). This deferral shall be reviewed and approved by the officer making the Threshold Decision and the officer who authorizes

Agency for International Development

§216.3

the project, program or activity. Such approval may be made only after consultation with the Office of General Counsel for the purpose of establishing the manner in which conditions precedent to disbursement or covenants in project and other agreements will avoid an irreversible commitment of resources before environmental review is completed.

(8) *Monitoring.* To the extent feasible and relevant, projects and programs for which Environmental Impact Statements or Environmental Assessments have been prepared should be designed to include measurement of any changes in environmental quality, positive or negative, during their implementation. This will require recording of baseline data at the start. To the extent that available data permit, originating offices of A.I.D. will formulate systems in collaboration with recipient nations, to monitor such impacts during the life of A.I.D.'s involvement. Monitoring implementation of projects, programs and activities shall take into account environmental impacts to the same extent as other aspects of such projects, programs and activities. If during implementation of any project, program or activity, whether or not an Environmental Assessment or Environmental Impact Statement was originally required, it appears to the Mission Director, or officer responsible for the project, program or activity, that it is having or will have a significant effect on the environment that was not previously studied in an Environmental Assessment or Environmental Impact Statement, the procedures contained in this part shall be followed including, as appropriate, a Threshold Decision, Scoping and an Environmental Assessment or Environmental Impact Statement.

(9) *Revisions.* If, after a Threshold Decision is made resulting in a Negative Determination, a project is revised or new information becomes available which indicates that a proposed action might be "major" and its effects "significant", the Negative Determination will be reviewed and revised by the cognizant Bureau and an Environmental Assessment or Environmental Impact Statement will be prepared, if appropriate. Environmental Assessments

and Environmental Impact Statements will be amended and processed appropriately if there are major changes in the project or program, or if significant new information becomes available which relates to the impact of the project, program or activity on the environment that was not considered at the time the Environmental Assessment or Environmental Impact Statement was approved. When on-going programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, the procedures outlined in this part will be followed.

(10) *Other approval documents.* These procedures refer to certain A.I.D. documents such as PIDs, PAIPs, PPs and PAADs as the A.I.D. internal instruments for approval of projects, programs or activities. From time to time, certain special procedures, such as those in §216.4, may not require the use of the aforementioned documents. In these situations, these environmental procedures shall apply to those special approval procedures, unless otherwise exempt, at approval times and levels comparable to projects, programs and activities in which the aforementioned documents are used.

(b) *Pesticide procedures*—(1) *Project Assistance.* Except as provided in paragraph (b)(2) of this section, all proposed projects involving assistance for the procurement or use, or both, of pesticides shall be subject to the procedures prescribed in paragraphs (b)(1) (i) through (v) of this section. These procedures shall also apply, to the extent permitted by agreements entered into by A.I.D. before the effective date of these pesticide procedures, to such projects that have been authorized but for which pesticides have not been procured as of the effective date of these pesticide procedures.

(i) When a project includes assistance for procurement or use, or both, of pesticides registered for the same or similar uses by USEPA without restriction, the Initial Environmental Examination for the project shall include a separate section evaluating the economic, social and environmental risks and benefits of the planned pesticide use to

§216.3

22 CFR Ch. II (4-1-11 Edition)

determine whether the use may result in significant environmental impact. Factors to be considered in such an evaluation shall include, but not be limited to the following:

(a) The USEPA registration status of the requested pesticide;

(b) The basis for selection of the requested pesticide;

(c) The extent to which the proposed pesticide use is part of an integrated pest management program;

(d) The proposed method or methods of application, including availability of appropriate application and safety equipment;

(e) Any acute and long-term toxicological hazards, either human or environmental, associated with the proposed use and measures available to minimize such hazards;

(f) The effectiveness of the requested pesticide for the proposed use;

(g) Compatibility of the proposed pesticide with target and nontarget ecosystems;

(h) The conditions under which the pesticide is to be used, including climate, flora, fauna, geography, hydrology, and soils;

(i) The availability and effectiveness of other pesticides or nonchemical control methods;

(j) The requesting country's ability to regulate or control the distribution, storage, use and disposal of the requested pesticide;

(k) The provisions made for training of users and applicators; and

(l) The provisions made for monitoring the use and effectiveness of the pesticide.

In those cases where the evaluation of the proposed pesticide use in the Initial Environmental Examination indicates that the use will significantly effect the human environment, the Threshold Decision will include a recommendation for the preparation of an Environmental Assessment or Environmental Impact Statement, as appropriate. In the event a decision is made to approve the planned pesticide use, the Project Paper shall include to the extent practicable, provisions designed to mitigate potential adverse effects of the pesticide. When the pesticide evaluation section of the Initial Environmental Examination does not indicate a poten-

tially unreasonable risk arising from the pesticide use, an Environmental Assessment or Environmental Impact Statement shall nevertheless be prepared if the environmental effects of the project otherwise require further assessment.

(ii) When a project includes assistance for the procurement or use, or both, of any pesticide registered for the same or similar uses in the United States but the proposed use is restricted by the USEPA on the basis of user hazard, the procedures set forth in paragraph (b)(1)(i) of this section will be followed. In addition, the Initial Environmental Examination will include an evaluation of the user hazards associated with the proposed USEPA restricted uses to ensure that the implementation plan which is contained in the Project Paper incorporates provisions for making the recipient government aware of these risks and providing, if necessary, such technical assistance as may be required to mitigate these risks. If the proposed pesticide use is also restricted on a basis other than user hazard, the procedures in paragraph (b)(1)(iii) of this section shall be followed in lieu of the procedures in this section.

(iii) If the project includes assistance for the procurement or use, or both of:

(a) Any pesticide other than one registered for the same or similar uses by USEPA without restriction or for restricted use on the basis of user hazard; or

(b) Any pesticide for which a notice of rebuttable presumption against re-registration, notice of intent to cancel, or notice of intent to suspend has been issued by USEPA.

The Threshold Decision will provide for the preparation of an Environmental Assessment or Environmental Impact Statement, as appropriate (§216.6(a)). The EA or EIS shall include, but not be limited to, an analysis of the factors identified in paragraph (b)(1)(i) of this section.

(iv) Notwithstanding the provisions of paragraphs (b)(1) (i) through (iii) of this section, if the project includes assistance for the procurement or use, or both, of a pesticide against which USEPA has initiated a regulatory action for cause, or for which it has

Agency for International Development

§216.4

issued a notice of rebuttable presumption against reregistration, the nature of the action or notice, including the relevant technical and scientific factors will be discussed with the requesting government and considered in the IEE and, if prepared, in the EA or EIS. If USEPA initiates any of the regulatory actions above against a pesticide subsequent to its evaluation in an IEE, EA or EIS, the nature of the action will be discussed with the recipient government and considered in an amended IEE or amended EA or EIS, as appropriate.

(v) If the project includes assistance for the procurement or use, or both of pesticides but the specific pesticides to be procured or used cannot be identified at the time the IEE is prepared, the procedures outlined in paragraphs (b) (i) through (iv) of this section will be followed when the specific pesticides are identified and before procurement or use is authorized. Where identification of the pesticides to be procured or used does not occur until after Project Paper approval, neither the procurement nor the use of the pesticides shall be undertaken unless approved, in writing, by the Assistant Administrator (or in the case of projects authorized at the Mission level, the Mission Director) who approved the Project Paper.

(2) *Exceptions to pesticide procedures.* The procedures set forth in paragraph (b)(1) of this section shall not apply to the following projects including assistance for the procurement or use, or both, of pesticides.

(i) Projects under emergency conditions.

Emergency conditions shall be deemed to exist when it is determined by the Administrator, A.I.D., in writing that:

(a) A pest outbreak has occurred or is imminent; and

(b) Significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and

(c) Insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of this regulation.

(ii) Projects where A.I.D. is a minor donor, as defined in §216.1(c)(12) of this part, to a multi-donor project.

(iii) Projects including assistance for procurement or use, or both, of pesticides for research or limited field evaluation purposes by or under the supervision of project personnel. In such instances, however, A.I.D. will ensure that the manufacturers of the pesticides provide toxicological and environmental data necessary to safeguard the health or research personnel and the quality of the local environment in which the pesticides will be used. Furthermore, treated crops will not be used for human or animal consumption unless appropriate tolerances have been established by EPA or recommended by FAO/WHO, and the rates and frequency of application, together with the prescribed preharvest intervals, do not result in residues exceeding such tolerances. This prohibition does not apply to the feeding of such crops to animals for research purposes.

(3) *Non-project assistance.* In a very few limited number of circumstances A.I.D. may provide non-project assistance for the procurement and use of pesticides. Assistance in such cases shall be provided if the A.I.D. Administrator determines in writing that (i) emergency conditions, as defined in paragraph (b)(2)(i) of this section exists; or (ii) that compelling circumstances exist such that failure to provide the proposed assistance would seriously impede the attainment of U.S. foreign policy objectives or the objectives of the foreign assistance program. In the latter case, a decision to provide the assistance will be based to the maximum extent practicable, upon a consideration of the factors set forth in paragraph (b)(1)(i) of this section and, to the extent available, the history of efficacy and safety covering the past use of the pesticide the in recipient country.

[43 FR 20491, May 12, 1978, as amended at 45 FR 70245, Oct. 23, 1980]

§216.4 Private applicants.

Programs, projects or activities for which financing from A.I.D. is sought by private applicants, such as PVOs and educational and research institutions, are subject to these procedures.